



United States Department of the Interior

OFFICE OF THE ASSISTANT SECRETARY
POLICY, MANAGEMENT AND BUDGET
Washington, DC 20240



JUN 23 2006

Memorandum

To: Solicitor
Assistant Secretaries
Inspector General
Bureau Directors

From: R. Thomas Weimer
Assistant Secretary

R. Thomas Weimer

Subject: Internal Affairs Interim Policy

The law enforcement officers who serve our communities are given great responsibility, asked to face significant dangers, and expected to conduct themselves in an ethical and respectful manner. Every day the vast majority of our law enforcement officers fulfill these duties with utmost professionalism and dedication. Allegations of misconduct or detrimental behavior will be investigated in accordance with the terms of this policy. Attached is an interim departmental Internal Affairs policy to accomplish this purpose.

For the purpose of this interim policy, the requirements stated herein shall apply to all departmental law enforcement personnel (including security, guard, and detention personnel) and all non-law enforcement supervisors or managers who have supervisory or managerial responsibility over the law enforcement program. The term Bureau Director of Law Enforcement (BDLE) is used to denote the senior official in each Bureau's law enforcement program. This policy does not apply to security or guard personnel contracted by the Department or its Bureaus.

BDLEs and the Director, Office of Law Enforcement and Security, shall consult with one another concerning any questions that may arise regarding the application of this policy.

Attachment

cc: Deputy Secretary
Chief of Staff

Internal Affairs Interim Policy

I. Purpose

This section sets forth interim policies and procedures for the establishment and operation of Department and Bureau Internal Affairs Units to investigate alleged criminal acts and/or complaints of misconduct against officers and non-law enforcement supervisors or managers who have supervisory or managerial responsibility over the law enforcement program. For purposes of this interim policy, the provisions outlined herein are binding on security personnel, but not guards contracting with the Department.

Where Bureau Heads determine a Bureau Internal Affairs unit will investigate allegations of misconduct by non-law enforcement personnel, these investigations should be conducted in accordance with Bureau policy and coordinated, as appropriate, with the Office of Inspector General. These investigations need not be reported to the Office of Law Enforcement and Security Internal Affairs Branch (OLES-IAB).

The Bureau of Indian Affairs (BIA) will conduct internal investigations related to special law enforcement commissions, tribal law enforcement personnel, and detention facility personnel in accordance with applicable laws and regulations.

II. Definitions

- A. Administrative Investigation: A noncriminal investigation related to the conduct, actions, or performance of an employee to determine whether such conduct, actions, or performance is in compliance with departmental and Bureau policy or code of conduct.
- B. Appropriate Federal Prosecutor: A United States Attorney or Section Chief in the Criminal Division of the Department of Justice.
- C. Bureau Law Enforcement Programs: Refers collectively to the organizational components within the Department that have law enforcement responsibilities.
- D. Complaint: An allegation of specific wrongful act(s) or omission(s) by an employee.
 - (1) Personnel/Administrative Complaint: Complaint against a law enforcement officer or a non-law enforcement supervisor of law enforcement personnel.
 - (2) Criminal Investigation: An investigation related to alleged violation of Federal, State, or local laws or regulations.
- E. Directive: A written communication of official policies, which governs action, conduct, or procedures.
- F. Early Warning System: An analysis of all sustained or not sustained complaints to identify individual officers or units engaged in behavior that is potentially problematic or

to identify potential problems with policy or training procedures. An early warning system will provide for nondiscipline related options, to include supervisory counseling, stress management training, employee assistance program access, training and/or counseling as appropriate.

- G. Law Enforcement Officer: A person who (1) has entered Federal service through established selection criteria and has received professional training according to published standards, (2) has been commissioned or sworn to perform law enforcement duties, (3) carries a firearm, and (4) is authorized to make arrests.
- H. Line Authority: The oversight and direction of an activity, including planning, controlling, and achieving goals and objectives. Line managers have direct operational responsibility for accomplishing assigned missions and ensuring that activities under their authority are performed in accordance with established laws, regulations, and policies.
- I. Misconduct: An act or omission by an employee which serves as the basis for taking corrective action when it is determined that such action will promote the efficiency of the Department consistent with the Department of the Interior Department Manual on Discipline and Adverse Action, 370 DM part 752.
- J. Office of Law Enforcement and Security: The Office of Law Enforcement and Security (OLES) is responsible for all policy aspects of departmental functions related to the management and oversight of law enforcement, security and emergency management.
- K. Profiling: The term 'racial profiling' means the practice of a law enforcement agent relying, to any degree, on race, ethnicity, or national origin in selecting which individuals to subject to routine investigatory activities, or in deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity, except that racial profiling does not include reliance on such criteria in combination with other identifying factors when the law enforcement agent is seeking to apprehend a specific suspect whose race, ethnicity, or national origin is part of the description of the suspect.
- L. Security Personnel: Any uniformed or nonuniformed Department employee assigned to security duties in an armed or unarmed capacity in the protection of critical infrastructure or key resources. This definition does not include contract employees.
- M. Supervisor: Any law enforcement or non-law enforcement employee of the Department who has direct line authority over law enforcement personnel.
- N. Use of Force: Any physical or instrumental act that imposes force upon another person.

III. Authority

- A. Department of the Interior, Departmental Manual, Section 112, Chapter 17.
- B. Memo from Secretary to the Assistant Secretary—Policy, Management and Budget, July 19, 2002, approving the Law Enforcement Review Panel’s recommendation that the Office of Law Enforcement and Security create a Internal Affairs Unit. (See, *U.S. Department of the Interior Office of Inspector General Report: Disquieting State of Disorder: An Assessment of Department of the Interior Law Enforcement*, Secretary of the Interior’s Law Enforcement Review Panel Report: *Law Enforcement at the Department of the Interior: Recommendations to the Secretary for Implementing Law Enforcement Reforms*, page 23, Secretary’s July 19, 2002 memorandum, *Law Enforcement at the Department of the Interior: Approval of Law Enforcement Reform Measures*.)
- C. DOI Handbook on Charges and Penalty Selection for Disciplinary and Adverse Actions, found at: <http://www.doi.gov/hrm/guidance/curronly.htm>.

IV. Policy

Bureau Internal Affairs Units shall maintain the following standards:

- 1.1 Investigative reports and files must contain appropriate documentation to support report findings, conclusions, and investigative accomplishments. Files must be maintained in a secure area with access limited for official purposes. Investigations must be conducted in a diligent and thorough manner to ensure pertinent issues are resolved and all appropriate criminal, civil, and/or administrative remedies are considered.
- 1.2 All Bureau Internal Affairs Units shall operate in accordance with these guidelines and policies. All bureaus shall use the departmental Case Tracking System to report complaints and investigative findings.
- 1.3 Internal investigations and findings will be reviewed by bureaus and OLES for relevant trends and indications of possible training and or policy revisions.
- 1.4 Internal investigations shall adhere to the President’s Council on Integrity and Efficiency and Executive Council on Integrity and Efficiency, *Quality Standards for Investigations* (December 2003), <http://www.ignet.gov/pande/standards1.html>.

V. Responsibilities

- 1.1 The Director-OLES shall:

- A. Promulgate Department policies and procedures for the operation and administration of Internal Affairs Units within the Department and its bureaus;
 - B. Review and approve bureau internal affairs policy; and
 - C. Maintain liaison with the OIG.
- 1.2 The Internal Affairs Branch—OLES shall:
- A. Ensure timely reporting and tracking of Bureau Internal Affairs investigations;
 - B. Refer complaints to the appropriate investigative authority;
 - C. Maintain a secure centralized internal affair Case Tracking System. The system will be utilized to track investigations, identify possible policy, training, and procedural adjustments, and provide periodic statistical reports to the OIG;
 - D. Conduct inspections of Bureau Internal Affairs Units to review policy compliance related to complaints, investigations, evidence, staffing and physical security;
 - E. Evaluate internal affairs investigations to assess policy and training needs within the Department and bureaus;
 - F. When requested by a BDLE or at the direction of the Deputy Assistant Secretary—Law Enforcement and Security (DAS-LES), the OLES may assume or participate in an internal affairs investigation when it is determined to be in the best interest of the Department. In those rare circumstances that may warrant an investigation by OLES, the DAS-LES will consult with the Director-OLES, the Inspector General, as well as the BDLE unless there is conflict of interest whereupon the BDLE's supervisor will be consulted; and
 - G. Review Bureau case opening reports and copies of Inspector General case referrals of law enforcement personnel, and supervisors of law enforcement personnel and complaints received from within the Department.
- 1.3 The BDLE or his/her designee shall:
- A. Develop and implement a Bureau Internal Affairs Unit; submit Bureau Internal Affairs Unit policies and procedures to the Director-OLES for approval;
 - B. Provide overall direction and supervision to the Bureau Internal Affairs Unit;
 - C. Ensure the Internal Affairs Unit complies with departmental policy and procedures and all applicable laws and regulations;

- D. Review case files;
- E. Ensure the Internal Affairs Unit receives appropriate staffing and funding support;
- F. Coordinate with human resource offices and collective bargaining units, where appropriate, regarding the disposition of sustained internal affairs investigations;
- G. Coordinate with OIG personnel, as appropriate, regarding Bureau investigations;
- H. Notify OLES of internal affairs complaints within 5 days of receipt by the Bureau Internal Affairs Units;
- I. Ensure notification of the Bureau Security Officer of any sustained internal affairs investigation involving an officer or supervisor of a law enforcement officer, consistent with 441 DM 2.3, B(9) (Security Officer Responsibilities); and
- J. Consult with the Director-OLES or his/her designee, regarding any questions related to this policy that may arise as a result of a complaint or an investigation.

1.4 Bureau Internal Affairs Units shall:

- A. Conduct internal investigations on complaints received directly by the unit or referred by the OIG or OLES;
- B. Review all complaints received and refer them to the appropriate authority. In instances where cases are referred to supervisors for investigation, the Bureau Internal Affairs Unit will maintain oversight of the investigation until completion;
- C. Enter all complaints into the OLES-IAB Case Tracking System within 5 days of receipt;
- D. Maintain a case management program, to include an early intervention system component;
- E. Investigate, or oversee investigation of, incidents including, but not limited to, the following:
 - * Intentional or unintentional firearm discharges (excluding training where there is no injury, recreational activities such as hunting where there is no human injury, and administrative uses such as dispatches of wildlife);
 - * Death or serious injury to a person in custody or control of an officer or Bureau, including detention facilities;

- * Alleged illegal use of controlled substances;
- * Willful or negligent making of an untruthful statement of any kind in any written or oral report pertaining to an officer's official duties, or making any untruthful statement before any court or to any authorized Government official;
- * Arrest of an officer;
- * Acceptance of money, gratuities, or other considerations contrary to Department or bureau rules and regulations;
- * Failure by any officer to report misconduct by any other employee;
- * Interference with the case of another officer without proper authority;
- * Neglect of duty (excluding general activities subject to direct supervisor oversight and discipline under that authority;
- * Use of force complaints;
- * Misuse of government vehicles;
- * Any violation of Department/Bureau ethics policy;
- * Racial profiling allegations;
- * Intoxication or consumption of alcohol and/or drugs while on duty;
- * Disclosure of information that may adversely impact any civil or criminal litigation;
- * Misuse of government equipment, including computers; and
- * Any complaint deemed appropriate by the Bureau head or BDLE.

Bureaus will notify the Director-OLES whenever a Bureau suspends or revokes an officer's law enforcement commission as a result of disciplinary action.

- 1.5. Supervisors. All complaints of misconduct will be documented and forwarded to the Bureau Internal Affairs Unit by supervisors in a timely manner, but no later than seven days from receipt. Upon completion of investigations referred to supervisors, all files,

documents, and evidence related to the investigation will be forwarded to and maintained by the Bureau Internal Affairs Unit in accordance with the bureau records retention policy.

VI. Consultation and Referrals to other Legal Authorities

1.1 Certain matters may fall outside the investigative jurisdiction of the Department or Bureau Internal Affairs Units. Bureaus should consult with the appropriate entity for referrals of complaints involving matters including, but not limited, to the following:

- A. *Hatch Act* violations, specific prohibited personnel practices, and *Whistleblower Protection Act* (5 U.S.C. 1212) are investigated and prosecuted by the Office of Special Counsel or the Office of Inspector General.
- B. Complaints of employment discrimination are investigated by the Department's Equal Employment Opportunity Office and adjudicated by the Equal Employment Opportunity Commission or by the bureau, at the request of the officer/agent.
- C. Grievances and appeals of adverse personnel actions may be handled by bureau human resource offices and are adjudicated by the Merit Systems Protection Board.
- D. Health and safety violations at the workplace are investigated by the Occupational Safety and Health Administration.
- E. Complaints alleging Civil Rights violations are investigated by the Federal Bureau of Investigation and the United States Attorney's Office, Civil Rights Division.

1.2 Department of the Interior OIG

The OIG is responsible for conducting or arranging for the conduct of investigations regarding the appearance of fraud, waste, abuse, or mismanagement in Department programs or operations, including serious matters that could compromise the Department's mission or threaten the integrity of DOI programs. Investigations include, but are not limited to the following:

- A. Allegations of fraud, waste, and abuse or mismanagement resulting in a significant dollar amount loss to the Government;
- B. Misconduct by employees with access to or responsibility for monies or financial systems, regardless of dollar amount and grade level;
- C. Allegations involving contractors, grantees, or any other entities doing business with making payments to, or receiving funding from the Department;

- D. Any information, allegation, or complaint that gives the appearance of fraud, waste, and abuse or inefficiency in departmental programs or operations;
- E. Allegations involving misconduct by supervisory personnel, regardless of grade;

The OIG Program Integrity Division (PI) has been designated as the primary OIG entity to oversee DOI law enforcement and security programs and coordinate investigations with the Bureau Internal Affairs Units. The OIG PI investigations include, but are not limited to the following:

- A. Allegations against employees at the GS-15 level and above;
- B. Allegations of felony criminal misconduct or domestic abuse by a law enforcement officer;
- C. Serious complaints against Department law enforcement officers and Department managers who have oversight of law enforcement programs.

Consistent with the *Inspector General Act of 1978*, 355 DM 1.1-3 (1983), the Deputy Secretary's memorandum dated April 12, 2000, *Department Policy for Referrals to the Inspector General*, and the *OIG Policy for Referrals from Departmental Offices and Bureaus*, July 3, 2000, the Office of Inspector General may assume responsibility for designated internal affairs investigations.

The OIG Hotline telephone number is 800-424-5081 or 202-208-5300. The OIG PI telephone number is 202-219-0725.

VII. Functional Procedures and Requirements

Bureau Internal Affairs units shall meet the following requirements:

- 1.1 Bureau Internal Affairs unit staffing and training. Each Bureau Internal Affairs unit shall have a minimum of one supervisory criminal investigator dedicated exclusively to internal affairs investigations and staff commensurate with caseload demands. Bureau Internal Affairs investigators shall complete the Criminal Investigator Training Program at the Federal Law Enforcement Training Center, or an equivalent course approved by the Director-OLES, within 1 year of assignment to an Internal Affairs Unit. Internal Affairs investigators shall successfully complete a specialized internal affairs training course, as approved by the Director- OLES, within 1 year of assignment to Internal Affairs Units.

Law Enforcement personnel in the field may be assigned internal affairs investigations as a collateral duty provided they have obtained the required specialized internal affairs training. These training requirements do not pertain to field supervisors or law

enforcement personnel conducting occasional administrative investigations referred by Internal Affairs Units. Exceptions to this requirement must be approved by the Director, OLES.

- 1.2 Establishment of a Complaint Registration Process. Bureaus shall establish a Complaint Registration Process explaining how a complaint may be filed with the Bureau Internal Affairs Unit as well as provide the telephone number of the Inspector General Hotline. All complaints (in person, written, telephonic, or electronic) will be accepted. Anonymous complaints will also be accepted and reviewed. When complaints are received by the bureaus, the BDLE or his/her designee will provide written notification of receipt of the complaint to the complainant in a timely manner.
- 1.3 Bureaus shall provide internal affairs information, including how to file a complaint, as part of the bureaus' mandatory ethics/employee responsibilities training for all employees. Bureaus shall include information on filing complaints utilizing their law enforcement website.
- 1.4 Bureau Internal Affairs Units shall complete investigations within 90 days of receipt of a complaint. Requests for extensions concerning non-OIG referrals will be made utilizing the Department Case Tracking System and include a case status report and justification. Requests for extensions concerning OIG referrals will be made directly to the OIG.

VIII. General Investigative Procedures

Where an allegation of officer misconduct involves a possible violation of criminal law and is being investigated by another entity, the investigator shall consult with the U. S. Attorney's Office or other appropriate local or state prosecutors to determine if an administrative investigation can or should be conducted simultaneously.

If during an administrative investigation, evidence of criminal misconduct is uncovered, investigators must stop the administrative investigation and consult with the U. S. Attorney's Office for guidance.

Included below are the legal warnings that investigators should be aware of when conducting interviews related to internal affairs investigations.

- 1.1 Garrity Warning. The Garrity Warning is used when an employee is being questioned about matters that could result in criminal prosecution, but is not in custody. The warnings must be given prior to a strictly voluntary interview. Garrity v. New Jersey, 385 U.S. 493 (1967). The employee may refuse to answer questions on the grounds that their answers may incriminate them. The employee cannot be discharged or disciplined solely for remaining silent. However, the employee's silence can be considered in an administrative proceeding for its evidentiary value that is warranted by the facts surrounding the case. The Garrity warning is often referred to as a "non-custodial

Miranda warning” because the employee is not in custody when the interview is given. The employee must be told that the interview is strictly voluntary and that they may leave at any time. (It must be noted that actual custody and perceived custody may in fact be the same, triggering Miranda, not Garrity warnings.)

OLEs will develop standard language to assure consistent application of this warning.

- 1.2 Miranda Warning. The Miranda Warning is used when an individual is being questioned and is in custody. The warning is given prior to questioning the individual. Miranda v. Arizona, 384 U.S. 436 (1966). The Miranda warning must advise the interviewee they have a “right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The [interviewee] may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statement on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.” Miranda, 384 U.S. at 444-45. It is important to remember that a person does not have to be at the police station to be considered “in custody.” An investigator must carefully assess the situation, and determine whether or not the interviewee feels that they are not free to leave.
- 1.3 Kalkines/Reverse Garrity Warning. The Kalkines or "Reverse Garrity" Warning is used when an employee is compelled to provide information that has existing or potential criminal and administrative consequences. Kalkines v. United States, 200 Ct.Cl. 570 (1973). This type of warning amounts to a “use immunity” for any act or omission revealed in the interview. Because only the Department of Justice has the authority to grant an individual use immunity, prior to issuing this type of warning, the investigator must first contact the appropriate U.S. Attorney’s Office and receive a letter of declination for the individual the investigator wishes to interview. No Internal Affairs investigator may give an interviewee a Kalkines warning, formal or informal, written or verbal, without first receiving written permission from the Department of Justice. Not all employee interviews necessitate this type of warning. This type of warning is only necessary when the investigator wishes to compel the interviewee to answer his questions or make a statement. If failure to provide a statement or answers may result in disciplinary action (including removal from employment) against the employee, then this type of warning is necessary. If there is no threat of disciplinary action against the employee for failure to give a statement or answer questions, then Kalkines warnings, and the use immunity associated with it, is not necessary. It is important to note that if Kalkines warnings are given, an individual may be subject to criminal prosecution for giving false statements or answers pursuant to 18 U.S.C. §1001.

Under the DM guidelines for employee discipline, an employee may be disciplined for failure to cooperate with administrative investigations, even if the employee has not received Kalkines warnings. In situations where there is no potential criminal implication, Kalkines warnings are not necessary, and an employee may be disciplined for acts or omissions revealed, or for failing to cooperate with the investigation. See, 370 DM 752 penalty 19.

OLES will develop standard language to assure consistent application of this warning.

- 1.4 In cases where an employee is interviewed, he or she should be advised of the nature of the complaint prior to any questioning.
- 1.5 The policy regarding the use of the polygraph, 446 DM 21, applies to all internal affairs investigations.
- 1.6 Employee Rights. Prior to questioning, an employee has the right to be informed of his/her status concerning an investigation and to be given the appropriate notification of rights. (See VIII, "General Investigative Procedures"). The employee may obtain access to information regarding the case in accordance with the *Freedom of Information Act*, 5 U.S.C. §552, and/or the *Privacy Act of 1974*, 5 U.S.C. §552a, employer-employee contact or grievance procedure. Disclosure of information should be consistent with these statutes and procedures.
 - A. Bureau Privacy Act officials and the Solicitor's Office can provide guidance on handling information subject to the Privacy Acts.
 - B. The *Whistleblower Protection Act* protects employees from retaliation for making protected disclosures concerning a substantial violation of law, rule or regulation; gross mismanagement; gross waste of funds; abuse of authority; or substantial and specific danger to public health and safety.
 - C. Special Consideration for Officers of the United States Park Police: Officers of the United States Park Police are represented by a collective bargaining unit, the labor committee of the Fraternal Order of Police. The labor-management agreement between the Union and the Department provide certain rights and privileges that Internal Affairs investigators need to be aware of. In addition to provisions included in the agreement, 5 U.S.C. §7114(a)(2), also known as the "*Weingarten Act*," provides: "an exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at ... any examination of an employee in the unit by a representative of the agency in connection with an investigation if-... the employee reasonably believes that the examination may result in disciplinary action against the employee, [or] the employee requests representation."

IX. Complaint Adjudication

- 1.1 Investigations will be resolved utilizing one of the following dispositions.
- A. **Sustained**--there is sufficient evidence to justify a reasonable conclusion of misconduct.
 - B. **Not Sustained**--there is insufficient evidence to either prove or disprove the allegations.
 - C. **Exonerated**--the incident occurred but was lawful and within policy.
 - D. **Unfounded**--the allegation was false or not factual or the accused employee was not involved in the incident.
 - E. **Other**--there is administrative or legal justification in the discretion of the investigating body.
- 1.2 The investigator will prepare a report that will be made part of the investigative file at the conclusion of each investigation. The report will consist of a description of the alleged misconduct, other misconduct identified, if necessary, and a summary/analysis of all relevant evidence and investigative findings. All investigative files will be forwarded by the Bureau Internal Affairs Unit through the appropriate chain of command for review.

X. Records Maintenance

It is essential that Internal Affairs files and related information be physically separated from other investigative records and remains under the control of the Bureau Internal Affairs Unit. Information in these files is considered confidential and must be retained in a secured area with access limited for official purposes, consistent with applicable laws and procedures.

XI. Discipline

Bureaus shall coordinate disciplinary actions related to sustained internal affairs complaints with their respective Human Resources office and apply the policies and procedures set forth in the Department Handbook on Charges and Penalty Selection for Disciplinary and Adverse Action, 370 DM 752. Bureau Internal Affairs Units shall report disciplinary actions taken to the OLES Internal Affairs Branch utilizing the Case Tracking System.